

RECEIVED  
IN THE UNITED STATE DISTRICT COURT  
FOR THE ~~9th~~ MIDDLE DISTRICT OF ALABAMA

DEBRA P. HACKETT, Clerk  
U.S. DISTRICT COURT  
MIDDLE DISTRICT ALA  
Northern Division

CHARLES SMITH, SR.

AIS # 129560

Petitioner,

VS,

WARDEN JAMES DELOACH  
and the Alabama Attorney  
General,

Respondents

CIVIL Action No

2:05-CU-93ST

PETITIONER RESPONDS TO RESPONDENT  
ANSWER

COMES NOW, the Petitioner respond  
to Court Order to respond to Respondent  
Answer on Oct 25, 2005 by the order of  
This Honorable Court on 27 Oct 2005,  
on why his Section 2254 petition should

not be barred by failing to file

within the one-year limitation period

established by 28 U.S.C. § 2244 (d)(1)

(1) The Petitioner avers that he can show cause and prejudices and fundamental miscarriage of Justice to excuse his procedural defaults. Murray v. Carrier (1986) 477 U.S. 478 (1986) Schlup v. Delo, 513 U.S. 298 (1995)

(a) The Petitioner will show Exhibits  
1 Page 8 the Alabama Supreme Court committed error in dismissing the Petitioner writ of Certiorari on 11 April 2005 for being untimely filed by (Exhibit M). The Petitioner writ of Certiorari was filed on April 7, 2005 on time due to fact The Petitioner filed a Motion for Extension which was Granted (Exhibit L Page 8 as part of

(2)

Responds Brief states that the Petitioner writ of certiorari was file on time was due April 8, 2005.

2) In (Exhibit 2 Page 9 of the Petitioner Responds Brief show the Petitioner filed a Motion of Reconsideration on 7 April 2005 from the dismissal of Petitioner Writ of Certiorari was denied.

3) The Petitioner avers by the Respondent answer show that the Appellant Counsel Vicker was paid by the State to represent the Petitioner on Direct Appeal. (Exhibit F Page 56-59)

a) Shows Appellant Counsel Vicker fail to file for Writ of Certiorari

b) The Petitioner never had a Transcript during the 217 days the Attorney General want to

count toward the Petitioner Statute of Limitation to file a 2254

C) That the BAR Association fail to discipling an Attorney who violate the Rules of Professional Conduct

(1) Rule 1.1.

(a) A Lawyer shall provide competent Representation to a client, Competent requires the Legal Knowledge, skill, thoroughness and preparation reasonably necessary for representation.

(2) Rule 1.3

(b) A Lawyer shall not willfully neglect a legal matter entrusted to him

4) The Petition avers that the facts will prove Attorney Vicker was in violation of the Petitioner

(4)

Sixth Amendment Right guaranteed by  
United States and Alabama Constitution.

A) (Exhibit F, C, 56-58) shows  
Attorney Vicker fail to protect  
the Petitioner Legal issue and  
fail to follow the Rule of  
Professional Conduct set forth  
by BAR Association.

B) Under Strickland v. Washington  
there a two prong test set  
forth by theses principle.

1) The Petitioner must show the  
Attorney was ineffective

2) The Petitioner must show how  
the Attorney ineffectiveness  
effected the outcome of  
his case

(a) The Petitioner has clearly  
proven Appellant Counsel  
Vicker was ineffective she

neglected all legal remedy and leave the Petitioner in a position where the Attorney General want to procedurally disbar the Petition by the ineffectiveness of Attorney Vicker on counting 217 days on his statue of limitation at no fault of Petitioner at all.

### Conclusion

The Petitioner have proven a miscarriage of Justice, cause, and prejudices to excuse his procedural defaults on Trial Appellant Counsel and the Alabama Supreme court for dismissing the Petitioner writ of Certiorari at no fault of Petitioner. The Petitioner pray this Honorable Court will grant this 2254 on the ground stated above.

Respectfully Submitted,  
Charles Smith  
Hamilton AZT  
223 Sasser Drive  
Hamilton, AL 35570



## CERTIFICATE OF SERVICES

I hereby certify that on this 10<sup>th</sup> day of Nov, 2005 I did serve a copy of the foregoing on the following, by placing the same in the United States Mail, first class, postage prepaid and addressed as follows:

THE Honorable J. Thomas Leverette  
Office of the Attorney General  
Alabama State House  
11 South Union Street  
Montgomery, Alabama 36130

Charles Smith

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